

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7037

Petition of EMDC, LLC for a Certificate of Public)
Good, pursuant to 30 V.S.A. § 248(j), authorizing)
the construction and operation of a temporary)
wind measurement tower and associated)
meteorological equipment at each of the following)
three sites: (1) East Haven Mountain located in)
the Town of East Haven, Vermont; (2) an)
unnamed hilltop located near Seneca Mountain in)
the Town of Ferdinand, Vermont; (3) an unnamed)
hilltop located south of the Town of Brighton,)
Vermont)

Order entered: 11/17/2006

I. INTRODUCTION

This Docket concerns a petition filed by EMDC, LLC, d/b/a East Haven Windfarm ("EMDC" or "Petitioner"), on December 17, 2004, to install and operate three temporary wind-measurement towers and associated equipment on sites in East Haven, Ferdinand, and Brighton, Vermont. On September 30, 2005, the Public Service Board issued an Order and Certificate of Public Good ("CPG") approving the construction of the wind-measurement towers in Ferdinand and Brighton. In this Proposal for Decision, I recommend that the Board approve the wind-measurement tower to be located in East Haven, with the conditions included in this Proposal for Decision.

II. PROCEDURAL HISTORY

EMDC filed the petition pursuant to 30 V.S.A. § 248(j). Notice of the filing in this Docket was sent on January 7, 2005, to all entities specified in 30 V.S.A. § 248(a)(4)(c) and all other interested parties. The notice stated that any party wishing to submit comments as to

whether the petition raised a significant issue with respect to the substantive criteria of 30 V.S.A. § 248 needed to file comments with the Board on or before February 7, 2005. A similar notice of the filing was published in the *Caledonian Record* on January 10 and January 17, 2005.

The Board received several comments contending that the petition raised a significant issue with respect to the substantive criteria of Section 248. On March 3, 2005, I held a prehearing conference to discuss the process and schedule for proceeding in this Docket. At that time, I determined that a site visit was necessary and set the site visit for early summer to ensure that interested persons would be able to attend the site visit.

At the prehearing conference, several persons asserted that the Board did not have jurisdiction over wind-measurement towers. A briefing schedule was set to address this issue. On July 29, 2005, I issued an Order determining that the Board did have jurisdiction over wind measurement towers.

A site visit to the Ferdinand and Brighton sites was held on June 1, 2005. A public hearing was held on the evening of June 1, 2005, at Island Pond. A site visit to the East Haven site was conducted on June 16, 2005. Parties filed additional comments on whether the petition raises a significant issue, informed by the site visit.

On July 29, 2005, I issued an Order stating that the petition raises a significant issue with respect to the environmental criteria for all three proposed sites and with respect to economic benefit and orderly development for the East Haven site.

On August 5, 2005, EMDC filed a letter stating that it had reached a resolution with the Vermont Agency of Natural Resources ("ANR") regarding environmental issues and consequently requested that the Board issue an order for the Brighton and Ferdinand sites. The August 5 letter included a stipulation between ANR and EMDC regarding proposed conditions to be included in a certificate of public good ("ANR Stipulation"). The stipulation sets forth a process for selecting an appropriate site for the proposed wind-measurement tower, prohibits motorized access to the project site, places limits on clearing at the project site, requires a biweekly bird carcass survey at the site, and requires EMDC to consult with ANR regarding ANR's need for information prior to Section 248 review of any wind-generating project that might arise from the proposed wind-measurement tower. On August 10, 2005, ANR filed a letter

stating that, if the conditions in EMDC's August 5 letter are incorporated into a final order and certificate of public good, ANR does not believe that the petition raises a significant issue with respect to environmental issues.

On August 19, 2005, the Clerk of the Board issued a memorandum asking parties to comment on EMDC's August 5 letter. No comments were received.

EMDC's August 5 letter proposed a schedule for addressing the issues at the East Haven site. As no negative comments were received regarding the proposed schedule, the Clerk issued a memorandum on August 19, 2005, stating that the proposed schedule has been adopted with certain modifications.

On September 9, 2005, Burke Mountain submitted prefiled testimony.

On October 5, 2005, EMDC filed rebuttal testimony.

A technical hearing was held on November 7, 2005. The hearing addressed only the issues of orderly development (Section 248(b)(1) and economic benefit (Section 248(b)(4)), as these were the only criteria for which parties had demonstrated that the petition raised significant issues.

Briefs were filed on December 2, 2005.

On December 5, 2005, EMDC filed a "Conditional Motion to Re-open." The motion requested that, if the Board would otherwise deny its petition for a certificate of public good, that further examination of Burke Mountain's witness be allowed in order to allow EMDC to address the recent sale of the Burke Mountain Ski Area. On December 16, 2005, Burke Mountain filed a motion to reopen the record to address the recent sale of the ski area and the purchaser's plans for real estate development in conjunction with the ski area.

On January 24, 2006, I issued an Order concluding that the sale of Burke Mountain is relevant to these proceedings, reopening the evidentiary record, and requiring that parties file a stipulation by February 7, 2006, regarding what new evidence should be offered into the record with a supplemental brief addressing the stipulation to be filed by February 14, 2006. In the event that no stipulation was reached, parties would file prefile testimony on February 14, 2006.

On February 9, 2006, Burke Mountain filed a request for an extension of time to file a stipulation.

On February 22, 2006, EMDC requested a one-week extension to file a stipulation.

On March 3, 2006, EMDC filed a request for a stay until April 21, 2006.

On April 10, 2006, Burke Mountain filed a "withdrawal of opposition to the issuance of a certificate of public good."

On April 14, 2006, the Clerk's office issued a memorandum requesting further information regarding a report in the *Caledonian Record* that EMDC had sold development rights for the wind-measurement tower, and any wind project that might follow, to Burke Mountain. In particular, the memorandum requested that EMDC explain what entity should receive the CPG, should one be issued.

On April 20, 2006, EMDC filed a letter stating that, although the development rights for a wind-measurement tower were sold to Burke 2000, LLC, there was no transfer of the fee interest in the land, and that, consequently, Burke 2000 does not have sufficient rights to commence development without entering into an agreement with the fee holder. EMDC contended that the "Board's standard requirement that CPGs may not be transferred without prior Board approval would be sufficient to ensure that prior to commencement of development, should it ever happen, the Board would have the opportunity to review the transfer of the CPG to the appropriate entity." EMDC represented that Burke Mountain agreed with EMDC's filing.

On May 1, 2006, the Kingdom Commons Group ("KCG") filed a letter contending that there is no entity which is entitled to a CPG at this time. KCG asserted that "EMDC and Burke Mountain Academy have, it appears, effectively settled out of court on terms that make issuing a CPG to measure wind on East Haven Mountain both moot and gratuitous."

I recommend that the Board issue a CPG for the proposed wind measurement tower to EMDC, for the following reasons. First, EMDC has not withdrawn its petition. Second, if Burke 2000 owns the development rights to a wind-measurement tower on East Haven Mountain, EMDC could purchase these development rights. Further, because the two parties who moved to admit additional information into the record have reached a settlement, there is no need to reopen the record. Finally, as set forth in more detail below, the proposed wind-measurement tower satisfied the criteria of Section 248.

III. FINDINGS

1. EMDC proposes to install a wind-measurement tower on East Haven Mountain in East Haven, Vermont. The proposed tower would be 197 feet in height and constructed of solid steel lattice sections. Attached to the tower would be meteorological sensors, including wind anemometers, wind direction vanes, and temperature sensors. Some of the sensors are proposed to have internal heating elements, thus requiring the use of a power source. Rubin pf. at 4–5.

2. EMDC proposes to install a 36-cubic foot enclosure at the base of the tower. The enclosure would contain a diesel generator, battery bank, and a 250-gallon double-wall fuel tank. Rubin pf. at 5.

3. The proposed tower (in ten-foot sections) and associated equipment would be transported to the site by helicopter. Rubin pf. at 7.

4. The proposed tower would be erected by means of a gin-pole pulley system. Using this method, only a small area at the base of the tower and a 20-foot strip from the tower to each guy anchor needs to be disturbed. Installation is expected to take less than two days. Rubin pf. at 6.

5. Once the equipment is operational, routine maintenance would be required a few times per year. Access to the site would be limited to non-motorized access. Rubin pf. at 7–8; ANR Stipulation.

6. The proposed tower would remain in place for five years. At the end of the five-year period, the tower and associated equipment would be removed from the site.¹ Rubin pf. at 8–9.

Orderly Development of the Region

[30 V.S.A. § 248(b)(1)]

7. The proposed tower would not unduly interfere with the orderly development of the region. This finding is supported by findings 8 through 10, below.

8. The proposed project will not involve transmission or distribution lines and will have limited visual impact. Rubin pf. at 7, 14; Findings 32-34, below.

1. EMDC has indicated that, if wind resources at the sites are such that EMDC would pursue construction of a wind-generating facility at the site, it would petition the Board to allow the wind-measurement tower to remain. However, it is unclear whether this would occur, and this proposal for decision only concerns a wind-measurement tower that would be allowed to remain on-site for five years.

9. The proposed wind-measurement tower is approximately 3.4 miles from the site that Burke Mountain considers to have the greatest opportunity for future real-estate development. Tr. 11/7/05 at 84 (Dwyer).

Discussion

Burke Mountain filed testimony contending that the proposed wind measurement tower, because it is directly related to the future development of wind generation facilities, would adversely affect real estate development at the Burke Mountain Ski Area.² Burke Mountain further asserts that real estate development is necessary for the economic viability of the ski area, and consequently, is important to the surrounding area.³

Burke Mountain has only provided speculation with regard to its assertion that the proposed wind measurement tower will impact future development plans. Additionally, there has not been a sufficient showing that, if the proposed project has an economic impact on Burke Mountain, such an impact would interfere with the orderly development of the region.

Need for Present and Future Demand for Service

[30 V.S.A. § 248(b)(2)]

10. The proposed tower will not be connected to the electrical grid. The proposed project could lead to a future petition for a wind generation facility. Rubin pf. at 4, 7.

System Stability and Reliability

[30 V.S.A. § 248(b)(3)]

11. The proposed tower would not be connected to the electric system and would not adversely affect system stability and reliability. Rubin pf. at 7.

2. Dwyer pf. at 6–9. As noted above, Burke Mountain subsequently withdrew its opposition to the issuance of a certificate of public good for the proposed wind-measurement tower. However, the testimony opposing the proposed tower is still in the evidentiary record and thus should be addressed.

3. Dwyer pf. at 9.

Economic Benefit to the State

[30 V.S.A. § 248(b)(4)]

12. The proposed tower would be an investment in property. Rubin pf. at 2.

Discussion

The proposed tower will have a small economic benefit to the State, due to the increased property taxes resulting from the improvements and the temporary job creation in erecting the tower. Additionally, as the Board found in Docket 6884, it is appropriate in examining the economic benefit of a wind-measurement tower to consider the potential economic benefit that could result if a wind-generation facility is constructed.⁴

The known economic benefit from the proposed wind measurement tower is small, and while the potentially significant economic benefit (arising from the potential benefit of a possible wind-generation facility) is speculative, the only evidence that indicates that the proposed wind-measurement towers will result in any economic harm to the state, due to the impact on potential real-estate development at Burke Mountain, is equally speculative. I therefore conclude that, on balance, the proposed project will result in an economic benefit to the state.

**Aesthetics, Historic Sites, Air and Water Purity,
the Natural Environment and Public Health and Safety**

[30 V.S.A. § 248(b)(5)]

13. The modifications as proposed will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment and public health and safety. This finding is supported by findings 14 through 41 below, which are the criteria specified in 10 V.S.A. §§ 1424(a)(d) and 6086(a)(1)-(8)(a) and (9)(k).

Outstanding Resource Waters

[10 V.S.A. § 1424(a)(d)]

14. The proposed tower would not be located in the vicinity of an outstanding water resource, as designated by the Water Resources Board. Rubin pf. at 10.

4. Docket 6884, Order of 4/21/04 at 19.

Water and Air Pollution

[10 V.S.A. § 6086(a)(1)]

15. Emissions from the proposed tower site would be limited to exhaust from a 7 kW generator. The generator is expected to consume an estimated 250 gallons of fuel annually. The generator does not require an air pollution control permit from the Agency of Natural Resources. Rubin pf. at 10.

16. Noise levels from the proposed tower will be less than 60 DbA at 100 feet. Noise levels at any property line will be indistinguishable from wind and other background noise. Rubin pf. at 10.

Headwaters

[10 V.S.A. § 6086(a)(1)(A)]

17. The proposed tower site would be located at elevations greater than 1,500 feet and, therefore, is located within headwaters. Impacts to water quality will be minimal. Rubin pf. at 10; exh. MR-5.

Waste Disposal

[10 V.S.A. § 6086(a)(1)(B)]

18. Any construction-related waste as a result of the proposed tower would be hauled off-site for disposal. The proposed tower site would not generate waste on an ongoing basis. Rubin pf. at 12.

Water Conservation

[10 V.S.A. § 6086(a)(1)(C)]

19. The proposed tower site would not require the use of water. Rubin pf. at 13.

Floodways, Streams, and Shorelines

[10 V.S.A. §§ 6086(a)(1)(D)(E) &(F)]

20. The proposed tower is not located within a floodway or located near any streams or shorelines. Rubin pf. at 12.

Wetlands

[10 V.S.A. § 6086(a)(1)(G)]

21. The proposed project would not adversely impact any wetlands. Rubin pf. at 12; exh. MR-5; ANR Stipulation.

22. Pursuant to the agreement between EMDC and ANR:

Prior to construction, EMDC shall work with a qualified consultant to develop detailed site maps which show the location of sensitive areas, such as wetlands and vernal pools, and the extent of clearing required to deliver and install MET Towers at the three sites. Using the resource maps as a basis for discussion, EMDC shall consult with ANR regarding the precise location of the towers, in order to minimize the clearing of vegetation and the impact to environmental resources. Specifically:

...

a. At the East Haven site, EMDC shall establish whether the existing clearing has any of the functions and values of a wetland as defined by the Vermont Wetland Rules. If the existing clearing does not function as a wetland, the tower shall be sited in said clearing. Otherwise the East Haven tower shall be sited in the area of second growth white birch to the southwest of the existing clearing.

...

c. The resource maps depicting sensitive areas and the final site plans shall be submitted to both ANR and the Public Service Board prior to commencement of construction.

ANR Stipulation.

Discussion

The ANR Stipulation provides a methodology for ensuring that there will not be an undue adverse impact on wetlands. The Stipulation requires that the resource maps be filed only with

ANR and the Board. All parties to this Docket should have the opportunity to review the resource maps and I recommend that the Board require EMDC to file the maps with all parties.

Sufficiency of Water and Burden on Existing Water Supply

[10 V.S.A. §§ 6086(a)(2)&(3)]

23. The proposed tower would not have any impact on existing water supplies. Rubin pf. at 13.

Soil Erosion

[10 V.S.A. § 6086(a)(4)]

24. The proposed tower would not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result. This finding is supported by findings 26 through 28, below.

25. A small quantity of soil will be disturbed in construction of the proposed tower and associated equipment. The disturbance is limited to the tower base and guy anchors. Rubin pf. at 9–10.

26. Any removed soils will be carefully packed in place to minimize the potential for erosion. Rubin pf. at 9–10.

27. The agreement between EMDC and ANR provides that the "East Haven Mountain site shall be limited to non-motorized access." ANR Stipulation.

Transportation Systems

[10 V.S.A. § 6086(a)(5)]

28. The proposed tower would not have an adverse impact with respect to highways, waterways, railways, airports and airways. Rubin pf. at 13.

29. FAA regulations do not require lighting of structures less than 200 feet tall. The proposed tower does not exceed this height. Rubin pf. at 13.

Educational and Municipal Services

[10 V.S.A. § 6086(a)(6) & (7)]

30. No additional educational or municipal services will be required as a result of the proposed tower. Rubin pf. at 13–14.

**Aesthetics, Historic Sites
and Rare and Irreplaceable Natural Areas**

[10 V.S.A. § 6086(a)(8)]

31. The proposed project will not have an undue adverse effect on the scenic or natural beauty, aesthetics, historic sites or rare an irreplaceable natural areas. This finding is supported by findings 32 through 35, below.

32. The proposed tower would be 18 inches wide on each side and of lattice construction. Rubin pf. at 14.

33. EMDC is proposing that the tower be removed five years after issuance of a certificate of public good. Rubin pf. at 8–9.

34. The width and coloring of the proposed tower (weatherized galvanized tubing and gray guy wires) significantly limits the visibility of the tower at a distance of more than one or two miles. Rubin pf. at 14–15.

35. The proposed tower would not adversely impact rare or irreplaceable natural areas. Rubin pf. at 15–16; exh. MR-5.

Necessary Wildlife Habitat and Endangered Species

[10 V.S.A. § 6086(a)(8)(A)]

36. The proposed tower would not significantly imperil necessary wildlife habitat or any endangered species. Rubin pf. at 16; exh. MR-5.

37. Pursuant to the agreement between EMDC and ANR:

Mapped Bicknell's Thrush habitat is present on both East Haven and Seneca mountains. As such, clearing must be minimized to the maximum extent practicable and occur either before May 15 or after August 1.

ANR Stipulation.

38. Under the agreement between EMDC and ANR:

EMDC shall conduct biweekly bird carcass surveys at each of the Met Tower sites for the life of the project. A plan for conducting the surveys shall be provided to the Agency for review and approval. The surveys shall be conducted by qualified scientists with experience in carcass surveys and shall employ scavenger rate and searcher efficiency tests. Carcass surveys shall begin on September 1 and extend through October 20. EMDC will modify the terms of its carcass survey to include and increase to weekly monitoring if two or more carcasses are found during any biweekly survey period. Within 24 hours EMDC shall notify the Vermont Fish & Wildlife Department if any carcasses are found. This shall be accomplished by an agreed upon email or telephone number. Results from the surveys shall be presented in a written report to ANR within two months of survey completion. The raw carcass survey data shall be provided to ANR along with a written report detailing survey results. ANR will review the annual report, and consult with EMDC, in order to determine whether changes to future surveys are appropriate (e.g., increased or decreased frequency of surveys, or discontinuing the surveys entirely).

ANR Stipulation.

Development Affecting Public Investments

[10 V.S.A. § 6086(a)(9)(K)]

39. The proposed tower is adjacent to Essex Timber Company lands, which are subject to easements held by the State of Vermont guaranteeing public access for recreation. Rubin pf. at 16.

40. The proposed tower must be as high as proposed in order to adequately measure the wind resource. Rubin pf. at 16.

41. Any impact to the Essex Timber Company lands is limited to aesthetic impacts. Rubin pf. at 16.

Discussion

As discussed above, the proposed tower would have limited aesthetic impact. Consequently, the proposed tower would not unnecessarily or unreasonably endanger the public interest in adjacent lands or materially jeopardize or interfere with the public's use or enjoyment of those lands.

Least-Cost Integrated Resource Plan

[30 V.S.A. § 248(b)(6)]

EMDC is not required to have a least-cost integrated plan pursuant to 30 V.S.A. § 218c.

Compliance with Electric Energy Plan

[30 V.S.A. § 248(b)(7)]

42. The proposed towers are consistent with the Vermont 20-Year Electric Plan, pursuant to 30 V.S.A. § 202(f). Letter of September 7, 2005, from Riley Allen, Director of Regulated Planning, to Andrew Raubvogel.

Outstanding Resource Waters

[30 V.S.A. § 248(b)(8)]

43. The proposed tower is not located on any segment of water that has been designated outstanding resource waters by the Water Resources Board. Rubin pf. at 10.

Existing or Planned Transmission Facilities

[30 V.S.A. § 248(b)(10)]

44. This criterion is inapplicable because the proposed tower would not be served by any transmission facilities. Rubin pf. at 6–7.

IV. CONCLUSION

Based upon all of the above evidence, I conclude that the proposed construction will be of limited size and scope; the petition does not raise a significant issue with respect to the substantive criteria of 30 V.S.A. § 248; the public interest is satisfied by the procedures authorized by 30 V.S.A. § 248(j); and the proposed project will promote the general good of the state if it is constructed and maintained in accordance with the proposed conditions.

The agreement between EMDC and ANR includes the following:

EMDC shall coordinate with ANR to determine what studies must be conducted prior to the filing of a petition for approval to construct a wind generation project at one or more of the wind measurement tower sites. Any such petition shall

include a statement by EMDC that it has worked in good faith with ANR in an effort to address their need for information prior to Section 248 review of the wind generation project(s).

The Board has included similar conditions in several recent orders approving wind measurement towers. Such prior conditions, however, required that the petitioner also coordinate with the Department in determining what studies should be conducted prior to the filing of a petition for a wind generating facility. Accordingly, I recommend that the Board include the proposed condition in the order and certificate of public good and modify the condition to require that the petitioner also consult with the Department.

This Proposal for Decision has been served on all parties to this proceeding in accordance with 3 V.S.A. § 811.

DATED at Montpelier, Vermont, this 9th day of August, 2006.

s/Ed McNamara
Edward McNamara, Esq.
Hearing Officer

V. BOARD DISCUSSION

After reviewing the comments on the Proposal for Decision ("PFD"), and receiving additional information regarding the disputed issues, we have determined that we will uphold the Hearing Officer's PFD, for the reasons set forth below.

The Board received two comments opposing the Hearing Officer's PFD. Cynthia Barber and John Day filed comments on August 8, 2006, recommending that the Board not issue a certificate of public good ("CPG") for the proposed project. Ms. Barber and Mr. Day contend that the economic benefit of the proposed project is minute. Ms. Barber and Mr. Day also assert that the PFD repeatedly references possible future wind generation projects, although the Board has previously informed parties that they cannot use the possibility of a future wind generation project as an argument against proposed wind measurement towers.

On August 14, 2006, Ellen Gray filed a letter contending that the PFD should be rejected because EMDC has sold its development rights to Burke Mountain. In addition, Ms. Gray asserts that the PFD does not adequately find that the proposed project results in an economic benefit.

On August 18, 2006, the Board issued a memorandum requesting additional information regarding the transfer of development rights for the wind measurement tower from EMDC to Burke Mountain. After receiving the additional information, and comments on this information from parties, we find that the transfer of development rights does not bar the Board from issuing a CPG for a wind measurement tower on East Haven Mountain. The two parties involved in the property rights transaction (EMDC and Burke Mountain) have both requested that the Board issue a CPG for the proposed project. Further, the CPG being issued today requires that the proposed wind measurement tower be removed from the site within five years of the date of the CPG.⁵ If EMDC does not obtain the necessary land rights within that time frame, it cannot construct the wind measurement tower. Alternatively, if Burke Mountain wishes to construct a wind measurement tower at the proposed location, it must receive Board approval for the transfer of the CPG.

5. A set time limit is a standard condition for CPGs authorizing the construction of wind measurement towers.

With respect to the economic benefit of the proposed project, we find, as the Hearing Officer does, that the project would provide an economic benefit to the State. The Hearing Officer found that the "proposed tower will have a small economic benefit to the State, due to the increased property taxes resulting from the improvements and the temporary job creation in erecting the tower." Although the benefit may be small, there is still a sufficient showing that there will be a benefit, as required by the statute.

Finally, with respect to Ms. Barber and Mr. Day's assertions regarding the extent to which a proposed project may rely on the benefits of a potential future wind generation facility, the Hearing Officer has previously ruled on this issue in this Docket⁶ and the Board has previously ruled on this issue in a separate docket.⁷ In an earlier Order in this Docket, the Hearing Officer summarized Board precedent regarding jurisdiction over wind measurement towers and addressed the issue of relying on such potential benefits. The Hearing Officer noted that Act 61 of the 2005 biennial session set forth state policy supporting renewable energy development, and that:

[i]n general terms, there is the potential for wind generation facilities to play a positive role in Vermont's energy resource mix. It is appropriate for the Board to recognize this potential benefit in making determinations regarding wind measurement towers, because, as noted above, the towers are a prerequisite for the potential development of wind generation facilities.⁸

Additionally, the Hearing Officer concluded that:

the potential benefits of wind generation in Vermont would reasonably be expected to be greater if the project is carefully sited, both in terms of siting to optimize prudent use of the wind resource and in terms of siting to minimize any adverse impacts of a wind generation facility. Those potential adverse impacts

6. Docket 7037, Order of 7/29/05 at 9-10.

7. *See*, Docket 6884, Order of 4/21/04 at 19-20.

8. Docket 7037, Order of 7/29/05 at 10.

cannot be known until the measurements are taken and the feasibility and/or micro-siting of wind generation facility is determined.⁹

Ms. Barber and Mr. Day do not present any new arguments on this issue at this time. Thus, for the reasons set forth in those previous Orders, we concur in, and adopt, the Hearing Officer's resolution of this issue.

VI. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that the erection and maintenance of a wind-measurement tower, and associated equipment, on East Haven Mountain in East Haven, Vermont, for a period of time not to exceed five years from the date of this Order, in accordance with the evidence and plans presented in this proceeding, will promote the general good of the State of Vermont in accordance with 30 V.S.A. Section 248, and a certificate of public good shall be issued in the matter with the following conditions:

1. EMDC shall remove the wind-measurement tower and associated equipment within five years of the date of the certificate of public good.
2. EMDC shall conduct biweekly bird carcass surveys at the tower site for the life of the project. The surveys shall be conducted according to the agreement between EMDC and ANR.
3. EMDC shall coordinate with ANR and the Department to determine what studies must be conducted prior to the filing of a petition for approval to construct a wind-generating project at one or more of the wind measurement tower sites. Any such petition shall include a statement by EMDC that it has worked in good faith with ANR and the Department in an effort to address their need for information prior to Section 248 review of the wind generation project(s).
4. Due to the presence of Bicknell's Thrush habitat on East Haven Mountain, clearing must be minimized to the maximum extent practicable and shall not occur between May 15 and August 1 in any year.
5. Prior to construction, EMDC shall work with a qualified consultant to develop detailed site maps which show the location of sensitive areas, such as wetlands and vernal pools,

9. *Id.*

and the extent of clearing required to deliver and install the wind-measurement tower at the project site. Using the resource maps as a basis for discussion, EMDC shall consult with ANR regarding the precise location of the tower, in order to minimize the clearing of vegetation and the impact to environmental resources. Specifically:

- a. At the East Haven site, EMDC shall establish whether the existing clearing has any of the functions and values of a wetland as defined by the Vermont Wetland Rules. If the existing clearing does not function as a wetland, the tower shall be sited in said clearing. Otherwise the East Haven tower shall be sited in the area of second growth white birch to the southwest of the existing clearing.

- b. The resource maps depicting sensitive areas and the final site plans shall be filed with the Board and all parties prior to commencement of construction.

6. Motorized vehicles (including ATVs and snowmobiles) may not be used to access the site.

7. The stipulation between EMDC and ANR, filed on August 5, 2005, is approved. EMDC shall comply with all requirements set forth in that stipulation.

Dated at Montpelier, Vermont this 17th day of November, 2006.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: November 17, 2006

ATTEST: s/Susan M. Hudson
Clerk of the Board

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.